IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2714 OF 2005

Shri Rupchand Urkudaji Maundekar)
aged 40 years, Sales Tax Officer)
Class-I, Room No. 816, Vikrikar)
Bhavan, Mazgaon, Mumbai 10.)
residing at E-1/RH-4, Lane No.7,)
Section 9, C.B.D. Belapur,)
Navi Mumbai - 400 614) ....Petitioner.

V/s

1. State of Maharashtra)
through is Secretary,)
Finance Department, Mantralaya,)
Mumbai - 32.)
)
2. Senior Assistant Commissioner)
of Sales Tax (Administration))
Vikrikar Bhavan, Mazgaon, Mumbai-10) ....Respondents.

Mr. R.K. Mendadkar with Ms. Helen Koli - Mandlik for Petitioner.

Mr. P.M. Patil, Assistant Government Pleader, for Respondents.

ALONGWITH
WRIT PETITION NO.4953 OF 2005

1. The State of Maharashtra)
Through the Principal Secretary,)
Public Works Department,)
Mantralaya, Mumbai - 400 032)
)
2. Sr. Asstt. Commissioner of Sales Tax)
(Adm.) Vikrikar Bhavan, Mazgaon,)
Mumbai 400 010.) ....Petitioners.

V/s

Shri Rupchand Urkudaji Maundekar)
Age-Adult, S.T.O. Class I, (then))
Room No. 816, Vikrikar Bhavan,)
Mazgaon, Mumbai)
R/o. E1/RH 4, Lane 7, Sector 9,)
(address for service), CBD Belapur,)
New Bombay 400 614.) ....Respondent.

Mr. P.M. Patil, Assistant Government Pleader, for Petitoiners.

Mr. R.K. Mendadkar with Ms. Helen Koli - Mandlik for the Respondent.

CORAM: **H.S. BEDI, C.J.,** &
V.M.KANADE, J.

DATE : **December 19, 2006**

ORAL JUDGMENT: (Per V.M. Kanade, J.)

1. Both these Writ Petitions can be disposed by by a common judgment since in both these Petitions the order passed by the Maharashtra Administrative Tribunal has been challenged by the respective Petitioners.

2. Writ Petition No. 2714 of 2005 is filed by the Original Applicant who had filed the Original Application which was disposed of with a direction that the applicant should

surrender his Caste Certificate which stated that he belonged to Special Backward Class. The said Caste Certificate was canceled and a direction was given to send the Applicant's Caste Certificate certifying him to be a person belonging to Scheduled Tribe Halba for verification to Caste Scrutiny Committee. Further direction was given that if it was held that the applicant belonged to Scheduled Tribe, he should be reinstated in service forthwith. The Original Applicant as well as the Respondents - State of Maharashtra, both have filed Writ Petition. The other Writ Petition No.4953 of 2005 is filed by the State of Maharashtra, challenging the aforesaid order of the Tribunal.

3. It is the case of the Petitioner that he was selected by the Maharashtra Public Service Commission on the post of Accounts Officer, Class-II in the Finance Department under the reserved category of Schedule Tribe some time on 7/1/1991. Thereafter, on 4/7/1992, he was selected for the post of Block Development Officer by the Maharashtra Public Service Commission. Thereafter, on 14/6/1995, he was further selected for the post of Sales Tax Officer, Class-I

through Maharashtra Public Service Commission and an order of appointment was issued by respondent on 14/6/1995, whereby the Petitioner was appointed to the post of Sales Tax Officer, Class-I.

4. On 15/6/1995, the respondent - State took a policy decision and directions were issued that those who joined on the basis of Scheduled Tribe Certificate in the State Government but who were thereafter found to be belonging to the Special Backward Category, their services should not be terminated. Petitioner joined the services as Sale Tax Officer, Class-I on 12/7/1995. Thereafter, on 18/2/1997, the Petitioner obtained Caste Certificate from the Deputy Collector, Nagpur wherein it was stated that he belonged to Koshti Special Backward Category. It is alleged in the Petition that this Certificate was obtained by him in order to get benefits of G.R. dated 15/6/1995. On 16/7/2003, the said Certificate was submitted to Respondent No.2 and, in the said application, the Petitioner had stated in unequivocal terms that he had given up his caste claim as belonging to

Scheduled Tribe Halba. Thereafter, he applied for the caste verification on the basis of the Certificate which he had obtained as belonging to Koshti Special Backward Category to the Caste Scrutiny Committee. On 1/9/2003, the Caste Scrutiny Committee validated the Caste Certificate of the Petitioner as belonging to Koshti Backward Class Category. Thereafter, Respondent No.2 issued show cause notice to the Petitioner asking him why disciplinary action should not be taken against him. He, therefore, filed Original Application No.573 of 2003 before the Maharashtra Administrative Tribunal. The Original Application No.573 of 2003 was disposed of with the order that if the Respondent - authority passed the order of termination, the same will be kept in abeyance for a period of 15 days. Thereafter on 3/3/2004, services of the Petitioner were terminated. This order of termination was again challenged by the Petitioner by filing Original Application No. 305 of 2004 which was was disposed of by giving directions which are stated hereinabove.

5. It is submitted by the learned Counsel for the Petitioner that the Petitioner was appointed on 14/6/1995 i.e one day

before G.R dated 15/6/1995 which was issued and, therefore, he was entitled to get the benefit of the said G.R. He relied upon the judgments of the Supreme court in the case of State of Maharashtra V/s Milind and others reported in **2001 (1) Maharashtra Law Journal SC 1** and in the case of Sanjay Madhusudan Punekar V/s. State of Maharashtra, reported in **2002(2) Maharashtra Law Journal 300.**

6. we are unable to accept the submissions made by the learned counsel appearing on behalf of the Petitioner. In our view, the protection which is given in the G.R. dated 15/6/1995 will not be available to the Petitioner. In the present case, the Petitioner had obtained the benefit of the Caste - Halba which is a Scheduled Tribe. After having obtained benefit under the said category, the Petitioner on his own, gave up the claim as Halba and obtained a Certificate that he belonged to the category of Koshti which is recognized as Special Backward Class in G.R. dated 15/6/1995. He, thereafter, proceeded to obtain a Caste Certificate as Koshti. Therefore, a departmental inquiry was held and after show cause notice was issued to him, his

services were terminated. The Petitioner having obtained the Certificate on the basis of his claim as Halba, he could not have obtained another Certificate that he belonged to Koshti and then claimed benefit under the said G.R. The contention of the learned Counsel for the Petitioner, therefore, cannot be accepted.

7. The second submission made by the learned Counsel for the Petitioner also is devoid of merits. In Milind's case (supra) and in Sanjay Madhusudan Purekar's case (supra), the claim of the Petitioner had been rejected and, thereafter, he had made a claim that he belonged to Koshti Caste. However, in the present case, the Petitioner, on his own, had unequivocally given up his caste claim as belonging to Halba on the basis of which he had secured a job. The ratio of the said judgments, therefore, will not apply to the facts of the present case.

8. The Maharashtra Administrative Tribunal has, in fact, secured the interest of the Petitioner by observing that in the event his caste claim, as Halba, on the basis of which he had

secured a job, is validated by the Caste Scrutiny Committee then he should be reinstated in service. We do not see any reason to interfere with the said order. The Writ Petition No.2714/2005 filed by the petitioner - applicant is rejected. The Writ Petition No.4953/2005 filed by the State of Maharashtra and others is also rejected. Rule is discharged. Under the circumstances, there shall be no order as to costs.

CHIEF JUSTICE

V.M. KANADE, J.